

1992

# Utah State Department of Health v. William D. Peterson and Pemco : Brief in Opposition to Certiorari

Utah Supreme Court

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William D. Peterson; Pro Se.

R. Paul Van Dam; Attorney General; Denise Chancellor; Assistant Attorney General; Attorneys for Respondent.

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BRIEF.

920142

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IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH STATE DEPARTMENT OF HEALTH,

Plaintiff-Respondent,

v.

WILLIAM D. PETERSON AND PEMCO,

Defendants-Petitioners.

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Case No. 920142  
910422-CA  
900901098

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STATE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Petitioners Seek Review of an Order of Affirmance of the Trial Court's Order, by the Utah Court of Appeals, Case No. 910422-CA, February 13, 1992. Such a Review Should be Denied.

---

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Pro Se Petitioner

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

UTAH STATE DEPARTMENT OF HEALTH,	:	
	:	
Plaintiff-Respondent,	:	
	:	Case No. 920142
v.	:	910422-CA
	:	900901098
WILLIAM D. PETERSON AND PEMCO,	:	
	:	
Defendants-Petitioners.	:	

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STATE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH STATE DEPARTMENT OF HEALTH,	:	
	:	
Plaintiff-Respondent,	:	
	:	
v.	:	Case No. 920142
	:	910422-CA
	:	900901098
WILLIAM D. PETERSON AND PEMCO,	:	
	:	
Defendants-Petitioners.	:	

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STATE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

Did the Utah Court of Appeals correctly affirm the order of the trial court pursuant to Rule 31 of the Rules of Appellate Procedure?

STATEMENT OF THE CASE

Petitioners Seek Review of an Order of Affirmance of the Trial Court's Order, by the Utah Court of Appeals, Case No. 910422-CA, February 13, 1992. Such a Review Should be Denied.

BACKGROUND

The State filed a declaratory judgment action against Mr. Peterson and his company, PEMCO, to determine whether equipment, which was being stored at the State's expense and which Mr. Peterson would not remove from storage, should be considered abandoned, and thus could be sold as surplus property. Mr. Peterson, acting pro se, filed a counterclaim, which was duplicative of his complaint against the State in Civil No.

900900523.

The trial court ordered Mr. Peterson to collect the equipment by a date certain, failing which the State could sell the equipment as abandoned property. Mr. Peterson collected the equipment by the court-imposed deadline and the State filed a motion to voluntarily dismiss its complaint without prejudice and to dismiss the counterclaim because it was duplicative of the complaint in Civil No. 900900523. The trial court granted the State's motion to dismiss.

Mr. Peterson appealed the trial court's order to the Utah Supreme Court (Case No. 900498) and the Supreme Court poured the case over to the Court of Appeals (Case No. 910422-CA). The Court of Appeals assigned the case to the Rule 31 calendar. After briefing the case and hearing oral argument, the Court of Appeals affirmed the trial court's order. A copy of the foregoing orders are appended to this brief.

#### ARGUMENT

Under Rule 46 of the Utah Rules of Appellate Procedure, review by a writ of certiorari is granted "only for special and important reasons." Such special and important reasons are absent in this case.

The Court of Appeals was correct in affirming the trial court's order. As noted in R.C. Tolman Construction Co., Inc. v. Myton Water Association, 563 P.2d 780, 782 (Utah 1977) an appeals court "indulge[s] the findings and judgment of the trial court with

a presumption of validity and correctness; review[s] the record in light favorable to them; do[es] not disturb them if they find substantial support in the evidence; and require[s] plaintiff [appellant] to sustain the burden of showing error." Mr. Peterson has failed to present evidence that the trial court's order is not supported by the record or that the trial court erred in dismissing the State's complaint and the appellant's counterclaim. Accordingly, the Order of Affirmance by the Court of Appeals conforms with legal precedent.

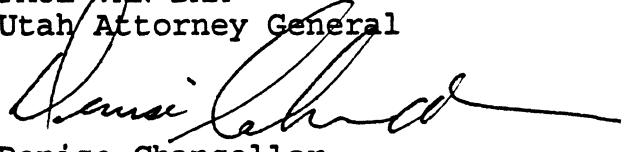
CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

DATED this 1st day of April, 1992.

Respectfully submitted,

PAUL VAN DAM  
Utah Attorney General

  
Denise Chancellor  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Response to Petition for Writ of Certiorari was mailed, postage prepaid, to William D. Peterson, 9174 Quail Hollow Drive, Sandy, Utah, 84093 this 1st day of April, 1992.





## **APPENDIX**

FILED DISTRICT COURT  
Third Judicial District

OCT 11 1990

SALT LAKE COUNTY

By                      Deputy Clerk

~~R.~~ PAUL VAN DAM  
Attorney General  
DENISE CHANCELLOR, USB # 5452  
Assistant Attorney General  
RICHARD K. RATHBUN, USB #5183  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1017

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

UTAH STATE DEPARTMENT OF HEALTH,	:	
Plaintiff,	:	
	:	O R D E R
	:	
v.	:	
	:	Civil No. 900901098
WILLIAM D. PETERSON AND PEMCO	:	
	:	Judge David S. Young
Defendants.	:	

---

Plaintiff filed a Motion to Voluntarily Dismiss its Complaint on August 27, 1990 because defendant, Mr. Peterson, removed the equipment that was the subject of this lawsuit in accordance with the Court's May 9, 1990 Order. The object of plaintiff's complaint was to ascertain the disposition of the subject equipment and this issue has now been resolved.

The defendant filed a counterclaim which was identical, except for the caption, with the complaint he filed in Civil No. 900900523 before Judge Russon.

The plaintiff has filed two Motions to Dismiss Counterclaim. The first motion was based on procedural and other grounds; the second claimed that the counterclaim was duplicative

of the case before Judge Russon (Civil No. 900900523). Defendant filed a motion captioned "Reassertion of Complaint, Demand for Answers, Objection to Plaintiff's Motion for Dismissal and Motion for Judgment for Failure to Answer Complaint."

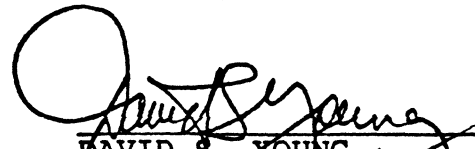
The Court having reviewed the motions and record before it, the responses and objections filed by both parties, now, for good cause appearing, enters the following order:

IT IS HEREBY ORDERED that plaintiff's Motion to Voluntarily Dismiss its Complaint is granted on the grounds that the disposition of equipment at issue in its complaint has been resolved.

IT IS ALSO ORDERED that plaintiff's Motion to Dismiss Defendant's Counterclaim is granted based on the duplicative claim in Civil No. 900900523 before Judge Russon.

DATED this 11 day of October, 1990.

BY THE COURT:

  
DAVID S. YOUNG  
DISTRICT COURT JUDGE

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

July 25, 1991

RECEIVED

JUL 26 1991

ATTORNEY GENERAL'S OFFICE

OFFICE OF THE CLERK

R. Paul VanDam  
Brent A. Burnett  
Richard K. Rathburn  
Denise Chancellor  
OFFICE OF ATTORNEY GENERAL  
236 State Capital Bldg.  
BUILDING MAIL

RECEIVED

25 1991

OFFICE OF  
ATTORNEY GENERAL

Utah State Department of Health,  
Plaintiff and Appellee,  
v.

No. 900498

William D. Peterson & Pemco,  
Defendants and Appellants.

Pursuant to the authority vested in this Court, this case is poured-over to the Court of Appeals for disposition. All further pleadings and correspondence should be directed to that Court. The address is 230 South 500 East, Suite 400, Salt Lake City, Utah 84102.

Geoffrey J. Butler  
Clerk

Court of Appeals No. 910422-CA

RECEIVED

JUL 26 1991

ATTORNEY GENERAL'S OFFICE

--00000--

NOTICE OF ORAL ARGUMENT  
AND ASSIGNMENT TO  
RULE 31 CALENDAR

Denise Chancellor  
Assistant Attorney General  
Governmental Affairs  
236 State Capitol  
Salt Lake City, UT 84114

Utah State Department of Health,  
Plaintiff and Appellee,

v.

William D. Peterson & Pemco,  
Defendants and Appellant.

Case No. 910422-CA

This case has been set for oral argument on Thursday, February 13, 1992 at 9:00 a.m. before this court at 230 South 500 East, Suite 400, Salt Lake City. Oral argument is limited to fifteen minutes per side. Following argument, the case will be submitted for an expedited decision pursuant to Rule 31. If any or all parties wish to waive oral argument, a written statement to that effect must be filed in the clerk's office on or before January 24, 1992.

Oral argument will not be continued absent a proper motion and stipulation of all parties. A motion for continuance will be granted only upon a showing of exigent circumstances. Specifically, a continuance will not be granted for reasons of a scheduling conflict, including a previously scheduled appearance in a lower court. If all parties do not stipulate to the continuance or if an emergency circumstance is not shown, oral argument will proceed as herein scheduled.

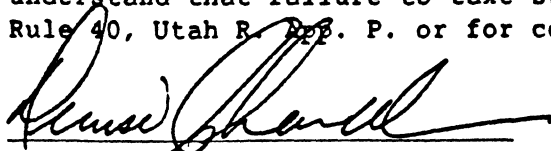
Counsel, if a party is represented by counsel, or the party must complete the information requested below and return this notice to the Court of Appeals no later than January 24, 1992.

This 9th day of January, 1992.

BY ORDER OF THE COURT:

Mary T. Noonan  
Clerk of the Court

I certify that this case has not been settled, discharged or stayed by bankruptcy, or otherwise rendered moot. If this case should be settled, discharged or stayed by bankruptcy, or otherwise rendered moot, I will notify the Court as soon as possible in accordance with Rule 37, Utah R. App. P. I understand that failure to take such action may be grounds for sanctions under Rule 40, Utah R. App. P. or for contempt of court under UCA 78-32-1 et. seq.

  
Signature of Attorney of Record

January 14, '92  
Date

NOTE: A CERTIFICATE OF SERVICE ON OPPOSING COUNSEL  
MUST BE ATTACHED WHEN RETURNING THIS FORM

**FILED**

**FEB 13 1992**

IN THE UTAH COURT OF APPEALS

*Gary Stroman*  
Clerk  
Court  
Appeals

-----ooOoo-----

Utah State Department of Health, )  
 )  
Plaintiff and Appellee, )  
 )  
v. )  
 )  
William D. Peterson and Pemco, )  
 )  
Defendants and Appellant. )  
 )

**ORDER OF AFFIRMANCE**

**Case No. 910422-CA**

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Before Judges Greenwood, Bench, and Orme.

This matter is before the court pursuant to Rule 31 of the  
Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the trial court's order is  
affirmed.

Dated this 13th day of February, 1992.

*Pamela T. Greenwood*  
Pamela T. Greenwood, Judge

*Russell W. Bench*  
Russell W. Bench, Judge

*Gregory K. Orme*  
Gregory K. Orme, Judge

**RECEIVED**

**FEB 14 1992**

OFFICE OF  
ATTORNEY GENERAL

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of February, 1992, a true and correct copy of the foregoing ORDER OF AFFIRMANCE was deposited in the United States mail to the parties listed below:

William D. Peterson  
9174 Quail Hollow Drive  
Sandy, UT 84093

Salt Lake Third District Court  
Attn: Michelle Snarr  
240 East 400 South  
Salt Lake City, UT 84111

Trial Ct. No. #900901098

Honorable David S. Young  
District Court Judge  
240 East 400 South, Room 504  
Salt Lake City, UT 84111

and a true and correct copy of the foregoing ORDER OF AFFIRMANCE was hand-delivered to a personal representative of the Attorney General's Office to be delivered to the parties listed below:

~~R.~~ Paul Van Dam  
State Attorney General  
Denise Chancellor  
Assistant Attorney General  
Governmental Affairs  
236 State Capitol  
Salt Lake City, UT 84114

Dated this 13th day of February, 1992.

By

Shari Brighton  
Deputy Clerk